



## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Davis Foulger et al.  
App. No.: 09/911,216  
Filed: July 23, 2001  
For: Method of Backtracing Network Performance  
Docket No.: EMPIR-024AUS

Group Art Unit: 2122

Examiner: Not yet assigned

Certificate of First Class Mailing under 37 C.F.R. §1.8(a)

I hereby certify that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Mail Stop Petition, P.O. Box 1450, Commissioner for Patents, Alexandria, VA 22313-1450 on the date set forth below.

15-May-03Date of Signature  
and Mail Deposit

By: David W. Rouille  
David W. Rouille  
Registration No. 40,150  
Attorney for Applicant(s)

Declaration Of David W. Rouille

Mail Stop Petition  
P.O. Box 1450  
Commissioner for Patents  
Alexandria, VA 22313-1450

Dear Sir:

1. My name is David W. Rouille and I am an attorney registered to practice before the United States Patent and Trademark Office, Registration No. 40, 150.
  
2. On or about May 30, 2000 I was contacted by Mr. Davis Foulger, at that time an Engineering Manager at RSW Software, a wholly owned subsidiary of Teradyne Inc. (now a wholly owned subsidiary of Empirix Inc.). Mr. Foulger requested that I

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OFFICE OF PETITIONS

prepare a provisional patent application.

3. The inventors of the subject matter were identified to me as Davis Foulger, John Esposito, William Babcock, Robert McElhaney, and William Minckler.
4. On July 26, 2000 I filed in the United States Patent Office a provisional patent application entitled "Method of Backtracing Network Performance". The provisional application named Davis Foulger, John Esposito, William Babcock, Robert McElhaney, and William Minckler as inventors. A copy of the provisional application filing receipt is enclosed herewith (Application No. 60/220,918) as Exhibit A.
5. On or about April 27, 2001 I was subsequently instructed by Mr. Larry Apfelbaum, a director of Engineering at Empirix Inc., to prepare and file a regular utility application which claimed priority from the above-identified provisional application.
6. On July 23, 2001 I filed in the United States Patent and Trademark Office the presently pending utility patent application (which was assigned application no. 09/911,216) and which claims priority from provisional application no. 60/220,918. The claims of the utility application no. 09/911,216 are directed to the subject matter contained in the provisional application and therefore the inventorship of the provisional application and the utility application are believed to be the same.
7. Between July 10, 2001 and September 23, 2001 I attempted to contact Davis Foulger, John Esposito, William Babcock, Robert McElhaney, and William Minckler on numerous occasions by U.S. mail at their last known address. The last known address of Davis Foulger is 54 Lake Oniad Drive, Wappingers Falls, NY 12590. The last known address of John Esposito is 2 Woodridge Road, Marlboroough, MA 01752. The last known address of William Babcock is 5 Kashmin's Way, Lakeville, MA

02347. The last known address of Robert McElhaney is 48 East Pasture Road, Berwick, ME 03901. The last known address of William Minckler is 104-3 Chestnut Street, Waltham, MA 02453. I received no response from any of the inventors.

8. On October 2, 2001 I transmitted a copy of the patent application as well as a Declaration and Assignment to the inventors at their last known addresses. The application, Declaration and Assignment were sent to the inventors via Federal Express. Copies of the letters and Federal Express receipts are enclosed herewith as Exhibit B. I have not received any replies from any of the inventors in response to the letters.
9. As evidenced by the employee agreements attached hereto and signed by each of the above identified inventors, each of the inventors has an obligation to sign the Assignment and Declaration in the present utility application, but has refused to do so.
10. Granting of the Petition under Rule 1.47(b) is required in order to preserve the rights of the parties and to prevent irreparable damages

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

Dated: 12-May-03

David W. Rouille

David W. Rouille  
Reg. No. 40,150  
Attorney for Applicant(s)

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